IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 16TH NOVEMBER 2006 / 25TH KARTHIKA 1928

WP(C).No. 36811 of 2004(G)

PETITIONER:

VARGHESE MATHEW, AGED 42 YEARS,
S/O. K.C.VARGHESE, KOCHUVADAKKETHIL, MANGARAM,
MSM P.O., PANDALAM (WORKSHOP INSTRUCTOR IN GOVT. POLYTECHNIC, MANAKKALA P.O., ADOOR).

BY ADV. SRI.V.PHILIP MATHEW
SRI.P.VIJAYASANKAR

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
HIGH EDUCATION DEPARTMENT, KERALA GOVT.SECRETARIAT
THIRUVANANTHAPURAM.

2. THE DIRECTOR OF TECHNICAL EDUCATION,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.SHYSON P.MANGUZHA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 16/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO. 36811/2004

APPENDIX

PETITIONER'S EXHIBITS

EXHIBIT P1: COPY OF THE PROCEEDING OF DIRECTORATE OF TECHNICAL EDUCATION DATED 17.10.96.

EXHIBIT P2: COPY OF THE GOVERNMENT ORDER NO.G.O.(F) NO.1026/95/(66) FIN. DATED 14.12.95.

EXHIBIT P3: COPY OF THE GOVERNMENT ORDER (MS) NO.158/98/H.EDN. DATED 21.12.1998.

EXHIBIT P4: COPY OF THE LETTER DATED 15/12/2000.

EXHIBIT P5: COPY OF THE CIRCULAR DATED 08.08.2001 ISSUED BY THE SENIOR JOINT DIRECTOR.

EXHIBIT P6: COPY OF the REPRESENTATION SUBMITTED BY PETITIONER TO 1ST RESPONDENT DATED 28.09.2001.

EXHIBIT P7: COPY OF THE G.O(RT) NO.926/04/H.EDN. DATED 12.07.2004.

EXHIBIT P8: COPY OF THE ORDER NO.ECI/S12263/94 DATED 17/06/1994.

EXHIBIT P9: A COPY OF THE AICTE RECOMMENDATIONS MADE ON 30.12.1999.

EXHIBIT P10: A COPY OF THE AMENDMENTS TO THE REGULATIONS RELATING TO QUALIFICATIONOF TEACHERS MADE by the ACADEMIC COUNCIL OF THE UNIVERSITY OF KERALA AND APPROVED BY THE UNIVERSITY.

EXHIBIT P11: A COPY OF THE ORDER DATED 02.04.2005 AS PROMOTION AS ASSISTANT LECTURER WAS APPROVED.

EXHIBIT P12: A COPY OF THE ORDER DATED 14.11.2005.

EXHIBIT P13: A COPY OF THE ORDER NO.ECI/31586/99 DATED 21.01.2000

EXHIBIT P14: A COPY OF THE ORDER DATED 30.11.2005.

EXHIBIT P15: A COPY OF THE ORDER DATED 03.02.2006 ISSUED BY THE SECOND RESPONDENT.

EXHIBIT P16: A COPY OF THE ORDER DATED 17.03.2006 ISSUED BY THE SECOND RESPONDENT PROMOTING 19 ASSISTANT LECTURERS AS LECTURERS.

EXHIBIT P17: A COPY OF THE U.O. NOTE DATED 26.07.2006

//TRUE COPY//

P.S. TO JUDGE

P.R. RAMAN, J.

W.P.© 36811 OF 2004

DATED THIS, THE 16TH DAY OF NOVEMBER, 2006.

J U D G M E N T

Petitioner was working at the time of filing this writ petition as Workshop Instructor in the Government Polytechnic, Manakkala, Adoor. The next promotion post is that of Assistant Lecturer which however, stood abolished as per G.O.(Ms) 158/98 dated 21.12.1998 as admitted in para 1 of the writ petition. According to the petitioner, he entered service as Workshop Instructor in Technical Education Department on 3.12.1990 and is possessing Diploma in Mechanical Engineering in First Class, with 66% marks. According to him, for promotion to the post of Assistant Lecturer or Engineering Instructor in the concerned branches, the feeder category is Workshop Instructor/Demonstrator having more than 60% marks in Diploma.

2. As per G.O.(F) No. 1026/95/(66)/ Fin. dated 14.12.1995, the scale of pay of Assistant Lecturers were revised. The Government, by G.P. (P) 3000/98 Fin. Dated 25.11.98 revised the scale of pay of Work shop Instructor/Demonstrator and persons who received the scale of pay of Rs.

2000-60-2300-75-3200 were accorded the scale of pay of 6500-176-7550-200-10550. So however, this scale was not extended to Engineering Instructors, according to the petitioner, which is discriminatory. Petitioner has a further case at any rate, on attaining the ten years of service in the entry cadre, he is eligible to get the post of Assistant Lecturer or Engineering Instructor with the scale of pay attached thereto; but were not afforded. He seeks to quash Ext.P3 order by which the post of Assistant Lecturer was abolished. He also seeks for a writ of mandamus directing the respondents sanction him time bound higher grade promotion in the pay scale of Rs. 6675-175-7330-200-10,550 and in the alternative, a direction to the first respondent to consider his representation and dispose of the same in accordance with law.

3. At the time of argument, learned counsel for the petitioner fairly submitted that he is not pressing the prayer for quashing Ext. P3 since he cannot successfully challenge the abolition of a post in the light of the apex court decision. However, he maintains that petitioner is entitled for grade promotion on completion of ten years. He having entered service on 3.12.1990, it is his case that on 3.12.2000 has completed ten years of service and thus eligible to grade promotion.

4. Petitioner relied on G.O.(P) 3000/98/Fin. Dated 25.11.1998 to support his claim and a copy of the said order was made available to me at the time of hearing Clause 5(2) under the caption "Promotion Prospects" reads as follows:

> (2) Employees who remain in their entry posts on scale of pay ranging from Rs. 2610-3680 to Rs. 4600 – 7125 will be granted three higher grades on completion of the period of qualifying service in their posts as follows with the scale of pay indicated in Table I.
>
> (i) The first higher grade on completion of 10 years service in the entry post.
>
> (ii) The second higher grade on completion of either 8 years of service in the first promoted post or a total service of 18 years in the entry post and the first regular promotion post/time bound higher grade together, whichever is earlier.
>
> (iii) The third higher grade on completion of 23 years of total service in the entry post and the regular promotion post (s) time bound higher grade(s) together.
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> (iv) A fourth time bound higher grade in the scale of Rs. 3350-5275 will be allowed to Class IV employees on completion of 30 years.

5. Thus, according to the petitioner, he having completed ten years of service in the feeder category, he is entitled to the benefit if the said Government Order for grade promotion.

6. In the counter affidavit, the stand taken by the respondent is that by virtue of Government letter No. 1966/L3/00/H.Edn. dated 6.7.2001 which however, is not produced along with the counter affidavit, Workshop Instructors/Demonstrators in Mechanical Engineering who are qualified for Assistant Lecturers will be eligible to the scale of pay of Rs. 2060-3200 up to 28.2.1997 and since the petitioner will be completing ten years only after 29.2.1997 he is not entitled to the said pay scale.

7. Since the petitioner has already made a representation Ext.P6 and he having sought for a direction to dispose of the same in accordance with law, it is not necessary to go into the merits of the contentions raised. But there will be a direction to the first respondent to consider and dispose of Ext.P6 in accordance with law. At the same time, it has to be observed that merely based on a Government letter issued after ten years of completion of service of an incumbent, the benefit already accrued cannot be taken away or restricted by a subsequent Government letter. Therefore, if the petitioner is otherwise eligible for grade promotion, dehors the Government letter No. 1966/L3/2000/H.Edn. dated 6.7.2001, his claim shall be duly considered while disposing of Ext.P6 representation.

8. In the result, the first respondent is directed to consider Ext.P6 representation submitted by the petitioner in accordance with law and subject to the observations made above, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment. Petitioner shall also be afforded an opportunity of being heard. He shall produce a copy of this judgment along with a copy of the writ petition before the first respondent for information and compliance.

The writ petition is disposed of as above.

P.R. RAMAN,
(JUDGE)

knc/-